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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 18th December, 1952

S.R.O. 2077.—**WIDEREAS** the election of Shri Mohammad Khoda Buksh of Village Barua, Post Office Beldanga, District Murshidabad, as a member of the House of the People, from the Murshidabad constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951, (XLIII of 1951), by Shri Baddrudduja Syed of No. 19, European Asylum Lane, Calcutta;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL

ELECTION PETITION No. 151 OF 1952

Election Case No. 2 of 1952 of West Bengal

The 13th December, 1952

CORAM

Sri S. C. Ray Chaudhuri, M.A., LL.B.—*Chairman*,

Sri M. N. Gan, M.A., LL.B.

Sri Sudhir Kumar Bhose, M.Sc., LL.B. } *Members of the Tribunal.*

In the matter of an Election Petition under Section 81 of the Representation of the People Act, 1951 (Act XLIII of 1951).

And

In the matter of Baddrudduja Syed residing at No. 19, European Asylum Lane, Calcutta.—*Petitioner.*

Versus

1. Mohammad Khoda Buksh, Village Barua, P.O. Beldanga, District Murshidabad.

2. Dharendra Nath Rai, Dhulyan, P.O. Dhulyan, District Murshidabad.

3. Dwijapada Sarkar, Jiaganj P.O. Jiaganj, District Murshidabad—*Respondents.*

For Petitioner.—Sri Santosh Kumar Basu, Advocate with Janab Syed Hasan Imam, Pleader.

For Respondent No. 1.—Sri Provat Kumar Sen Gupta and Sri Amiya Kumar Chatterjee, Advocates.

JUDGMENT

The petitioner Syed Baddrudduja has by an Election Petition presented under section 81 of the Representation of the People Act called into question the election of the Respondent No. 1, Mohammad Khoda Buksh as a Member of the House of West-Bengal. It is a single-seated constituency of Murshidabad in the State of West-Bengal. It is a single-seated constituency. On 17th November 1951 the petitioner delivered 2 nomination papers to the Returning Officer (District Magistrate) of Murshidabad Parliamentary Constituency. In item No. 7 of both the nomination papers he described the constituency in the electoral roll of which his name is included, as "Taltola (Constituency) Calcutta of the West Bengal Legislative Assembly" and in item No. 8 against serial number of the candidate he mentioned his number as "550 in original roll-Part A, 19, European Asylum Lane (Calcutta) in the Final Electoral Roll for Taltola Assembly Constituency, Vol. 1." On 21st November 1952 scrutiny was held by the Returning Officer and both the nomination papers were rejected declaring them to be invalid. The order of the Returning Officer is challenged as unlawful, illegal and *mala fide* contending that the descriptions given in the nomination papers were sufficient to determine his identity and eligibility which were not disputed during scrutiny. On 24th November 1951 the Returning Officer published a list of valid nominations including only the names of the 3 respondents who were the other candidates for election to fill the seat. Allegations of collusion and *mala fides* have been made against Sri J. C. Talukdar, the Returning Officer (District Magistrate) and Sri Debabrata Mullik, the Additional District Magistrate, for illegally rejecting the nomination papers at the instance of the Respondent No. 1, the returned candidate. The election was held from 8th to 19th of January 1952 and the Respondent No. 1 was declared as elected in the *Gazette of India*, dated 14th February 1952. It has been further alleged that the petitioner being illegally deprived of the opportunity of seeking an election on account of the rejection of his valid nomination papers, the Respondent No. 1 had an easy walk-over, and as such the election was void. There is the prayer for a declaration that the election is wholly void and/or that the election of Respondent No. 1, the returned candidate, is void.

The Respondent No. 1, Mohammad Khoda Buksh contests the case. Other Respondents Nos. 2 and 3 have not entered appearance.

In view of the allegations of collusion and *mala fides* made against the Returning Officer and Sri Debabrata Mullik, Additional District Magistrate, copies of the Election Petition were served on them and both of them submitted explanations emphatically refuting the charges made against them. Before the commencement of the trial the petitioner withdrew all the allegations of collusion and *mala fides* as well as those made in para 8 of the petition stating that Sri Debabrata Mullik received the nomination papers and expressed his satisfaction after going through them. As a matter of fact, it appears that the Returning Officer, Mr. J. C. Talukdar himself received the nomination papers and signed his name against the Certificate of delivery.

Respondent No. 1 in his long written statement denied all the material allegations and the insinuations made against the Returning Officer and Sri Debabrata Mullik and supported the order of rejection of the nomination papers of the petitioner, which were found not valid according to law. He asserted that the scrutiny of the nomination papers was held in accordance with the law and the nomination papers were properly rejected and that the petitioner made no grounds to show that it had in fact materially affected the result of the election.

The following issues were framed for decision—

ISSUES

- (1) Have the nomination papers of the petitioner been improperly and illegally rejected by the Returning Officer?
- (2) Has the result of the election been materially affected by the rejection of the nomination papers of the petitioner?
- (3) What relief, if any, is the petitioner entitled to?

DECISION

(1) The petitioner, Syed Baddrudduja delivered to the Returning Officer the two nomination papers [marked Ext. 4 & 4(a)] with a certified copy of the relevant entries in the Final Electoral Roll referred to in the nomination papers, which has been marked as Ext. 9. He sought election to the House of the People

from the Murshidabad Parliamentary Constituency in the State of West Bengal. As we have already stated, Item No. 7 of both the nomination papers was filled up as follows:—

“Taltola (Constituency) Calcutta of the West Bengal Legislative Assembly”.

The entry in Item No. 8 of the nomination papers runs thus—

“550 in the Original Roll-Part A, 19, European Asylum Lane (Calcutta) in the Final Electoral Roll for Taltola Assembly Constituency, Vol. I.”

These entries in items 7 and 3 substantially agree with the entries in the final electoral roll, Ext. 9. Section 32 of Representation of the People Act, 1951 provides that any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.” Section 4 of the Representation of the People Act, 1951 states the qualifications for membership of the House of the People. Clause (d) of the said section makes eligible an elector for any Parliamentary constituency to be chosen to fill a seat in the House of the People. Article 84 of the Constitution of India lays down “that a person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India.

(b) is, , in the case of a seat in the House of the People not less than 25 years of age;”

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

The definition of the term “elector” has been given in section 2(c) of the Representation of the People Act, 1951 as follows:—

“Elector in relation to a constituency means a person whose name is for the time being entered in the electoral roll of that constituency.”

It is abundantly clear that Item No. 7 of the nomination paper should indicate the Parliamentary constituency in the electoral roll of which the name of the petitioner candidate is included. In the nomination papers in question that was not done. Mention was made of an Assembly constituency which is an unit of the Parliamentary constituency in the electoral roll of which the name of the petitioner can be found. Nowhere in the nomination papers the name of that Parliamentary constituency was given. As we have already mentioned the entries in Item 8 also refer to those in the electoral roll of the Legislative Assembly Constituency mentioned in Item No 7 *Ex facie* the petitioner did not describe himself as an elector of any Parliamentary constituency, which was incumbent on him to make his nomination valid. *Prima facie* the nomination papers did not disclose that the petitioner was eligible to stand as a candidate for a seat in the House of the People.

Sri Santosh Kumar Basu, the learned advocate for the petitioner concedes that Item No 7 of the nomination papers was not properly filled up, as the name of the Parliamentary constituency in the electoral roll of which the petitioner's name has been included, should have been mentioned; but he contends that it is a technical defect which is not of a substantial character. In respect of the entries in Item No. 8 his contention is, that they were sufficient to raise a presumption under section 114 of the Indian Evidence Act that the petitioner must be an elector of the Parliamentary constituency of which Taltola Assembly Constituency is an unit and as such the nomination papers should not have been rejected declaring them invalid. Referring to the procedure as laid down in the Representation of the People Act 1950 and the rules framed thereunder as to the preparation of the electoral rolls of Parliamentary Constituencies and Assembly Constituencies, he relies mainly on the legal presumption that arises under section 114 of the Indian Evidence Act. He argues vehemently that it was the duty of the Returning Officer to point out of the defects at the time of the presentation of the nomination papers and to permit removal of the errors which were merely of a technical nature. Section 33(5) of the Representation of the People Act provides that “on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and secondor as entered in the nomination paper are the same as those entered in the electoral rolls.” Under the proviso to the said sub-section (5) the Returning Officer may permit any clerical error in the nomination paper in regard to the names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls. He may direct also where necessary, that any clerical or printing error in the entries in the nomination paper shall be overlooked. It is contended that the satisfaction referred to in sub-section (5) is judicial satisfaction and in the present case the Returning Officer

was so satisfied by examining the entries in the nomination paper. Under Sub-section (6) of Section 33 the Returning Officer could require the petitioner to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll. It is argued that the electoral rolls referred to in sub-sections (5) and (6) are the electoral rolls of the Parliamentary constituency in which the names of the candidate as well as the proposer and seconder are included and as such the Returning Officer failed to discharge his duties by not requiring the petitioner to produce the relevant electoral rolls of the Parliamentary constituency. The function of the Returning Officer under section 33 of the Representation of the People Act 1951 at the time of presentation of a nomination paper is more or less a ministerial one. At that stage he cannot throw out any nomination paper on any ground, even if there be any vital defect in it. Under sub-section (5) he is to satisfy himself only in respect of the fact that the names and electoral roll numbers as entered in the nomination paper are the same as those entered in the Electoral Rolls. If the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purpose of sub-section (5) require a person presenting a nomination paper to produce the relevant electoral roll to show that the entries made in the nomination paper correspond to the entries in the said electoral roll. On a plain reading of the section it cannot be interpreted that he is to direct production of any electoral roll which is not mentioned in item 7 of the nomination paper. In the present case the petitioner produced with his nomination papers a certified copy of the entry in the final electoral roll of the Taitola Assembly Constituency to show inclusion of his name therein, though under the law he was not required to do so at that stage. The Returning Officer could not have any occasion to call for any other copy of the electoral roll for comparison with the entries made in the nomination papers. He performed his duties according to law and his satisfaction at that stage has not improved the position of the petitioner in any way. Because of the fact that the petitioner in item No. 1 of the nomination paper described the constituency as Murshidabad Parliamentary Constituency, it was, in our opinion, no part of the duty of the Returning Officer to call for any Parliamentary electoral roll in which the name of the petitioner might appear. No controversial question could be decided by the Returning Officer at that stage, nor could he permit any alteration in the entries in the nomination papers which were not mere clerical errors. The Certificate of delivery given in the nomination papers merely mentions the fact of delivery to the Returning Officer at his office at certain date and hour by the candidate or his proposer or seconder, and nothing else. The certificate does not refer to any satisfaction as to the correctness of the entries or otherwise. Under Section 35 of the Representation of the People Act it is the duty of the Returning Officer to cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper both of the candidate and of the persons who have subscribed the nomination papers as proposer and seconder. The object of this notice is evidently to give opportunity to all other candidates to raise objections if necessary. Under Section 36 (1) of the Act the Returning Officer is enjoined to give all reasonable facilities for examining the nomination papers of all candidates by the other candidates or their agents. Under section 36 (2) of the Act the Returning Officer is to examine the nomination papers and to decide all objections which may be made to any nomination. After summary enquiry he may refuse any nomination either on such objection or *suo moto* on the grounds stated in the said sub-section. In the present case two of the grounds, *viz.*,

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; and
- (b) that there has been any failure to comply with any of the provisions of section 33, arise for consideration.

For the purpose of summary enquiry the Returning Officer is to see whether *prima facie* the candidate is qualified or not; or in other words he is to examine whether the candidate has expressly stated his qualification in the nomination paper. He cannot be expected to make a laborious enquiry to ascertain if the candidate has the requisite qualification or not. Of course, the qualifications of citizenship and age of a candidate for a seat in the Legislative Assembly are the same as those for a seat in the House of the People. As has been argued by the learned advocate for the petitioner a presumption of his being a parliamentary elector may arise under Section 114 of the Indian Evidence Act when the name of the petitioner has been entered in an electoral roll of an Assembly Constituency. The presumption does not go further and it remains for the petitioner to establish that his name has actually been entered in the electoral roll of some Parliamentary

constituency Section 33 of the Representation of the People Act, 1951 requires that the candidate is to deliver the nomination paper completed in the prescribed form. Rule 4 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 enjoins that every nomination paper shall be completed in the form specified in Schedule II Item Nos 7 and 8 of the nomination paper should be filled in giving the name of the constituency in the electoral roll of which the name of the candidate appears and his number in the said electoral roll. These are the necessary particulars to determine the identity and the eligibility of the candidate as an elector. Such essential particulars should be clearly stated in unequivocal, unambiguous and explicit terms not only for the clear understanding of the Returning Officer, but for that of the other candidates for whose information a notice of the nomination containing descriptions similar to those contained in the nomination paper must be published under section 35 of the Representation of the People Act 1951. Under section 36(1) of the said Act the candidates and their agents must also be given reasonable opportunities to examine all the nomination papers, evidently to enable them to raise objections, if necessary. *Prima facie* the nomination papers of the petitioner are bad in law as they do not disclose the name of the Parliamentary constituency in the electoral roll of which his name is included nor his number in such electoral roll of the Parliamentary constituency. Apparently then there has been failure to comply with the provisions of section 33.

Let us now consider the question of presumption under section 114 of the Indian Evidence Act which has been made the main plank to take a stand by Sri Santosh Kumar Basu, Advocate. Article 326 of the Constitution of India lays down "the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 21 years of age shall be entitled to be registered as a voter at any such election." Section 5 of the Representation of the People Act 1950 provides that for the purpose of elections to the House of the People there shall be the constituencies as provided by section 6 or by order made thereunder and *no other constituencies*. Similar provision has been made in section 8 of the said Act for Legislative Assembly constituencies for the purpose of elections to Legislative Assemblies. Part III of the Act of 1950 deals with the registration of Parliamentary electors. Under section 15 electoral roll shall be prepared for every Parliamentary constituency. Electoral Registration Officer for each Parliamentary constituency is appointed under Section 22. Special provisions with regard to such Parliamentary electoral rolls have been made in Section 22A directing republication of final electoral roll for each such Parliamentary constituency after necessary alteration in accordance with the decisions given on claims and objections. There is further provision for revision or correction of electoral rolls in special cases by the Election Commission under section 25 of the said Act. Part IV of the Act deals with the registration of electors for State Legislatures. Under section 26 the provisions of Sections 15 to 25 (including the special provisions contained in Sections 22A) for registration of Parliamentary electors are made applicable for preparation of Assembly electoral rolls. The procedure being the same and the qualifications of the voters being similar simultaneous preparation of electoral rolls for the Parliamentary constituencies and the Assembly constituencies in the same State, has been directed in Rule 23 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950. That Rule lays down that "it shall be lawful to combine preparation and publication of the electoral rolls for the Parliamentary constituencies and the Assembly constituencies in the same State". Evidently for administrative convenience such simultaneous preparation and publication of separate electoral rolls for the Parliamentary constituencies and the Assembly constituencies have been deemed proper. Certainly the Parliamentary constituencies being not co-extensive with the Legislative Assembly constituencies, the reference to one can in no circumstances be deemed to serve the purpose of a reference to the other. Several Assembly constituencies are included in one Parliamentary constituency, no doubt, as will appear from the Delimitation of Parliamentary and Assembly Constituencies (West Bengal) Order, 1951. It has been argued with great vehemence that when in the nomination papers the petitioner mentioned the name of his Assembly constituency it was the duty of the Returning Officer to presume that he must be an elector registered in some Parliamentary electoral roll and he should have referred to such roll ascertaining the name of the relevant Parliamentary constituency from the Delimitation Order or asking the petitioner to produce a certified copy of the electoral roll. It has been complained that the petitioner was not given reasonable opportunity to rebut the objection raised by the respondents during scrutiny to which he was entitled under the proviso to section 36(5) of the

Representation of the People Act, 1951. A reference to the well-considered order of the Returning Officer will make it clear that the case of the petitioner was fully considered and thoroughly discussed before the rejection of the nomination papers. The petitioner Syed Baddrudduja admitted in his deposition that the "statement in the order of the Returning Officer rejecting my nomination paper represented the correct state of things." It seems that Syed Baddrudduja, a lawyer and a Muslim political leader, did not care to ascertain even at the time of scrutiny the name of the Parliamentary constituency in the electoral roll of which he is included as an elector. He, of course, now says in his deposition "myself and my representative stated before the Returning Officer that I was an elector of the Calcutta South-East Parliamentary Constituency. I stated that my roll number in the Parliamentary constituency was identical with the number in the electoral roll of the Assembly Constituency. That was my impression. I had no occasion to check them at that time". He apparently deposes relying on an impression which is not borne out by what was asserted before the Returning Officer. The Returning Officer in his order states "Sri N. K. Bhattacharjee desires me to agree with the view that it is an un rebuttable presumption that if the name of a person appears in the electoral roll for a West Bengal Assembly Constituency that it must unavoidably follow that his name is entered in one or the other Parliamentary constituency included in the State of West Bengal. If this view be accepted Sri Bhattacharjee would contend that the filing by the intending candidate Syed Baddrudduja of a certified copy of the relevant extracts of the original roll for Taltola Assembly Constituency would automatically mean that this intending candidate is entered in some or other roll of an electoral roll for a Parliamentary constituency in West Bengal and that therefore the defect, if there be any in the nomination paper, may at best be taken to be technical and not substantial enough to merit rejection". It appears that the petitioner took certified copy of the relevant entries in the electoral roll of Calcutta South East Parliamentary Constituency long after the scrutiny in April 1952 (*Vide* Ext. 2). Evidently it was not mentioned before the Returning Officer that the petitioner is an elector registered in the electoral roll of South East Calcutta Parliamentary Constituency. The Returning Officer after discussing the view points placed before him observed "It is sufficient to state that it is possible, though admittedly highly unlikely for a person at a specific point of time to find his name in one roll and not the other. In this view of the case I must then hold that commonsense approach enunciated by Baddrudduja and his authorised agent lose much force; section 2(a) of the Act, 1951 requires rigid adherence". The Returning Officer was quite justified in taking this view considering the provisions in the law for alterations in the electoral roll and republication. The argument of the learned advocate for the petitioner that on a reference to the Delimitation Order the Parliamentary Constituency could be ascertained by the Returning Officer has very little force. Against Taltola Assembly Constituency at page 32 of the Delimitation Order, 1951 the name of the Parliamentary constituency does not appear. It could not be a part of the duty of the Returning Officer to find out the name of Taltola making a search from the description of all the Parliamentary constituencies of Calcutta given in the Delimitation Order. Summary enquiry does not cover such a wide field requiring the Returning Officer to investigate into the controversies relating to any legal presumption. In connection with cases of omission to mention subdivision of electoral rolls in nomination papers, it has been held in several reported cases that it is not the duty of the Returning Officer to search every subdivision of the electoral roll to find out if the entry is correct. References in this connection may be made to the Saharanpur District N.M.R. Case (Jagat Narain, Vol. IV, 96), Punjab North East Towns Case (Jagat Narain, Vol. II, 143), Raipur North Case (Jagat Narain, Vol. II, 146), and Ambala Division Case (Hammond, 77). It is to be seen whether there has been substantial compliance with the provisions of law, though meticulous accuracy need not be insisted. In our view the entries in Items Nos. 7 and 8 of the nomination papers of the petitioner did not fulfil the requirements of law. The entries made in those items were wholly incorrect. The fact that the number 550 in the electoral roll of Taltola Assembly Constituency agrees with the number of the petitioner in the Calcutta South East Parliamentary constituency cannot at all improve the position. It may be noted that the name of the petitioner appears in Vol. I of the Taltola Assembly Constituency Electoral Roll, whereas his name appears in Vol. VIII of the Calcutta South East Parliamentary Constituency Electoral Roll. No presumption can arise as to the number in view of the admitted fact that there are cases in which the numbers in the Parliamentary roll and the Assembly roll do not agree. Even if the petitioner produced the correct electoral roll at the time of scrutiny he could not be allowed under proviso to section 33(5) to amend his nomination papers. The errors were not clerical and so the Returning Officer could not give any permission to correct them under the said proviso, even at the time of presentation of the nomination papers. During scrutiny the

petitioner did not pray for any time under proviso to section 36(5) of the Act to produce evidence to rebut the objection of respondents. Adjournment for more than 48 hours was not also possible under the said proviso. If the correct electoral roll had been produced at that stage it could not be of any avail as the vital defects were in the nomination papers.

A case has been made that the petitioner was misled by the copies of electoral rolls supplied to him by the Electoral Registration Officer and as such he is entitled to take shelter under a Press Note issued by the Election Commission on December 1, 1951 in connection with the filing of nomination in Part C States. The application made before the Electoral Registration Officer, Calcutta for 3 copies of the electoral roll has been marked as Ext. 1 in this case. Mentioning the fact that the petitioner intended to seek election to the State Assembly as well as to the House of the People, he made a prayer for issue of 3 certified copies (ordinary) of his name and number in the electoral roll of Taltola Constituency (Ward No. 14, Calcutta) wherein his name has been enrolled as a voter. By no stretch of imagination it can be construed that he applied for any copy of the Parliamentary electoral roll. He was supplied with what he wanted and there was no reasonable ground for being misled on receipt of such copies. The Press Note of which a copy has been marked as Ext. (J), issued long after the scrutiny, in respect of Part C States does not help the petitioner in the least. In Part C States the Parliamentary electoral roll has been subdivided into different parts to make different Assembly Constituencies. [Vide Government of Part C States Act, 1951 (XLIX of 1951) Section 8(2)], whereas in Part A States separate electoral rolls were prepared for Parliamentary constituencies and Assembly constituencies, as we have already noticed. The Press Note refers to a case having special circumstances peculiar to Part C States, which is just the reverse of one now under consideration.

No objection being raised as to the identity of the petitioner Syed Baddrudduja it has been contended that no question could arise regarding the identity as well as eligibility of the petitioner as a candidate for election. Syed Baddrudduja being a well-known figure in the public life of the country for a considerable period, the question of his identity might not be questioned. It did not necessarily follow that his eligibility as a Parliamentary elector became undisputable. For the purpose of nomination, identity and eligibility go hand in hand together and they could only be proved by reference to the Parliamentary electoral roll in which his name has been included. The omission to mention in Item No. 7 of the nomination papers the name of the relevant Parliamentary constituency and non-mention of the number of voter referring to Part VIII of the Parliamentary Electoral Roll were, in the opinion of the Tribunal, grave errors and irregularities which cannot be deemed to be technical defects. Such defects are of very substantial character materially affecting the validity of the nomination. We may add that the entries in the items of the nomination papers relating to the proposers and the seconders are similarly incorrect. We hold that the Returning Officer was fully justified in rejecting the nomination papers and he acted properly and legally. The Tribunal accordingly decides this issue against the petitioner.

(2) The question whether the result of the election has been materially affected can only arise if there be improper rejection of any nomination within the meaning of Section 100(C) of the Representation of the People Act, 1951. It being held by the Tribunal that there has been no improper rejection of the nomination of the petitioner, no detailed discussion on this point becomes necessary. It may be observed that in the Election Petition nowhere it has been stated in so many words that the result of the election has been materially affected. In paragraph 20 of the petition it has been stated that the petitioner's removal by rejection of his nomination papers gave the Respondent No. 1 an easy walk-over to the House of the People in election, as the petitioner was the only candidate who could defeat the said respondent. In paragraph 23 it has been further stated that the election was void in as much as it had been held without the petitioner being declared a validity nominated candidate. No prayer has also been made in the petition for a declaration that the result of the election has been materially affected. The matter has been left for an inference from the statements just referred by us. Much has been said in evidence about the political leadership of the petitioner and his past record of service. From the Statistical Abstract, West Bengal 1948, the percentage of Muslim majority in the different constituencies in the district of Murshidabad has been shown and references have been made to the Return of Election for the different constituencies in the district of Murshidabad by the learned Advocates of both sides in support of their respective cases. It is an

admitted fact that the Congress candidates swept the poll in all those constituencies irrespective of their religion. Syed Baddrudduja contested the Assembly elections in two of the constituencies, viz., Raninagar and Jalangi. He forfeited his deposits in both the constituencies. His case is that after the rejection of his nomination papers for Murshidabad Parliamentary Constituency, he did not take much interest in the Assembly elections. According to him he selected Raninagar and Jalangi constituencies because he considered them to be the weakest link in the chain. The learned Advocate for the respondent shows from the documents that those two constituencies had overwhelmingly large number of Muslim voters and he contends that the petitioner Syed Baddrudduja selected those two constituencies apparently expecting good Muslim support which could lead to his success, but he was disappointed as he lost the confidence of the electorates. We do not propose to discuss the question further. This issue does not arise as there has not been any improper rejection of the nomination papers of the petitioner.

(3) In view of the findings recorded by the Tribunal the election cannot be declared void, either wholly or in respect of the election of the Respondent No. 1 who is the returned candidate.

Lastly there remains for consideration the question of costs. The petitioner has fought hard to substantiate his case and has dragged the Respondent No. 1 before this Tribunal to defend his position. He signally failed in his attempt to set aside the election. In the circumstances the Respondent No. 1 is entitled to his costs.

The result is that the Election Petition fails and is dismissed. The Respondent No. 1 is awarded Rs. 250 for his cost to be paid by the petitioner. There will be no order for costs in favour of the Respondent Nos. 2 and 3 who are absent.

(Sd.) S. C. RAY CHAUDHURI,
Chairman,
Election Tribunal.

(Sd.) M. N. GAN,
Election Tribunal.
Member,

(Sd.) SUDHIR KUMAR BHOSE,
Member,
Election Tribunal.

CALCUTTA;
The 13th December, 1952.

[No. 19/151/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.